

**Kumarappa and Another Vs. B. Manjunath and Others**

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**Court :** Karnataka

**Decided On :** Mar-21-1990

**Reported in :** AIR1991Kant73; ILR1990KAR2041; 1991(4)KarLJ619

**Judge :** K.A. Swami and;D.R. Vithal Rao, JJ.

**Acts :** [Constitution of India](#) - Articles 141 and 226; Karnataka Mandal Panchayat (Election of Pradhan and Upa-Pradhan) Rules, 1987 - Rule 4; Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 - Sections 5(3)

**Appeal No. :** Writ Appeal No. 442 of 1990

**Appellant :** Kumarappa and Another

**Respondent :** B. Manjunath and Others

**Advocate for Def. :** M.R. Nayak and ;Chandrasekharaiah, Govt. Adv.

**Advocate for Pet/Ap. :** Gangadhara R. Gurumath, Adv.

**Judgement :**

1. At the stage of preliminary hearing, respondents 1 and 2 have entered appearance. Learned High Court Advocate is also directed to take notice and appear for respondent No. 3. As the appeal can be disposed of on a short ground, it is admitted and heard for final disposal.

2. This writ appeal is preferred against the order dated 7-12-1989 passed in Writ Petition No. 1605 of 1989. The appellants were respondents 4 and 5 in the writ petition. Respondent Nos. 1 and 2 were the petitioners. Respondent No. 3 was the 1st respondent. In this judgment, the parties will be referred to with reference to the ranking assigned to them in the writ petition.

3. In the writ petition the petitioners sought for a declaration that the entire proceeding culminating on 3-1-1989, Produced as Annexure 'D' is illegal and void and to quash the notice dated 14-12-1988 issued by the 2nd respondent -- Prescribed Officer for Election to the offices of Pradhan and Upa-Pradhan of Krishnanagar Mandal Panchayat, produced as Annexure-B. The petitioners also sought for issue of writ in the nature of mandamus directing respondents 1 and 2 -- Deputy Commissioner, Bellary and the Prescribed Officer for Election to the post of Pradhan and Upa-Pradhan to re-do the election results of the proceedings dated 19-4-1987 strictly in terms of R. 4 of Karnataka Mandal Panchayat (Election of Pradhan and Upa-Pradhan) Rules, 1987 and the judgment of this Court in Ashok v. J. S. Jakkannavar, ILR (1989) Kant 123.

4. The election of respondents 4 and 5 as Pradhan and Upa-Pradhan of the Krishnanagar Mandal Panchayat was challenged before this Court in Writ Petition 17164 of 1987 on the ground that the nominations of the two members, who were nominated to the Mandal Panchayat were invalid because the nomination were not made by the Zilla Parishad but were made by the Adhyaksha of the Zilla Parishad. Similar question arose in many petitions filed before this Court and they were heard and decided together in Ashok v. Jakkannavar, ILR (1989) Kant 123. This Court came to the conclusion that nominations made by the Adhyaksha of the Zilla Parishad were invalid because the nomination power vested with the Zilla Parishad and not with the Adhyaksha and accordingly, declared all the nominations as null and void and further as follows :

'28. There is no dispute that the impugned nominations were made by the Adhyaksha and therefore, they were illegal. When a person lacking in authority to make the nomination, purports to exercise the said power and nominate the persons to be Members of Panchayats, such nominated members, would not

attain any legal status. The nominations are ultra vires acts and are void. Declaration of the invalidity of the nominations strikes at the root of the respective nominations, resulting in the declaration that the nominations were void and ab initio. Therefore, those nominated persons had no legal status to participate in the elections to elect the Pradhan and Upa-Pradhan and their votes will have to be excluded and fresh declarations of the results of the elections have to be made.

29. It was argued that S. 55 of the Act saves the validity of the proceedings of a Panchayat notwithstanding the disability or ineligibility of any member participating in it. S. 55 reads thus:--

'55. Validity of proceedings :

(1) No disqualification of or defect in the election or appointment of any person acting as Member, or as the Pradhan or Member of a Committee of a Mandal Panchayat appointed under this Act shall be deemed to vitiate any act or proceeding of the Mandal Panchayat or any such Committee, as the case may be, in which such person has taken part whenever the majority who were parties to such act or proceeding were entitled to act.

(2) No resolution of a Mandal Panchayat or of any Committees of a Mandal Panchayat constituted under this Act shall be deemed invalid on account of any irregularity in the service of notice upon any Member provided that the proceedings of the Mandal Panchayat or Committee were not prejudicially affected by such irregularity.

(3) Until the contrary is proved, every meeting of a Mandal Panchayat or of a Committee of a Mandal Panchayat constituted under this Act in respect of proceedings whereof a minute has been made and signed in accordance with this Act, shall be deemed to have been only duly convened and held and all the Members of the meeting shall be deemed to have been duly qualified, and where the proceedings are the proceedings of a Committee, such constituted and to have had the power to deal with matters referred to in the minute.

(4) During any vacancy in a Mandal Panchayat or Committee of a Mandal Panchayat, the continuing Members may act as if no vacancy had occurred.'

30. The participation in the election proceeding by persons who purport to be the Members by virtue of a void nomination under S. 5(3) cannot be equated to participation by Members. These persons cannot be treated as Members of the Panchayat at all, in view of the invalidity of their nominations, at the very inception. Hence this section cannot be attracted. Already we have observed that there is a difference between a Member who is elected and as such continues to be a Member until his election is set aside by recourse to the provisions of the Act by the incompetent authority. When the nomination is declared by this Court as invalid, on the ground that the power under S, 5(3) was exercised by an incompetent person, the nomination becomes void ab initio and no nomination existed in the eye of the law. As Wade in his Administrative Law (5th Edition) states at page 310 :

'Action which is ultra vires is unauthorised by law, outside jurisdiction, null and void, and of no legal effect.'

Earlier at page 39, the eminent Author States,--

'An Act which is for any reason in excess of power (whatever) is often described as being 'outside jurisdiction.' 'Jurisdiction in this context, means simply 'power'.....'. Any administrative Act or order which is ultra vires or outside jurisdiction is void in law, i.e., deprived of legal effect. This is because in order to be valid it needs statutory authorisation, and if it is not within the powers given by the Act, it has no legal leg to stand on.'

Therefore, it is not possible to accept the plea of the appellants, based on S. 55 of the Act.

XX XX XXRe contention (v)

34, It has already been noticed that the voting pattern at the first meeting of panchayat to elect the Pradhan has a decisive effect on the future continuance in office of the person even though he gets a simple majority of votes. The person

who gets a simple majority of votes at the said meeting has an almost assured full term of office. Therefore, if the declaration of the result of the election was affected by the voting of the non-Members (i.e., persons nominated as Members by a void action), the justice of the situation demands restoration of the prospects that would have prevailed on the date of the election. This can be achieved, by undoing the declaration of the results and by excluding the votes of those illegally nominated Members. A recounting of valid votes has to be done. The results of the elections will have to be declared afresh with reference to the valid votes cast for the respective candidates at the election meeting held already.'

5. Following the aforesaid decision Writ Petition No. 17164 of 1987 was allowed in the following terms :

'.....Consequently, election of respondents 7 and 8 as Pradhan and Upa-Pradhan of a Mandal Panchayat must also be declared as illegal and void.

Writ petition succeeds. Liberty is reserved to the concerned authority to take steps for conduct of election of Pradhan and Upa-Pradhan as is permissible under law. Rule made absolute.'

6. There-after, it is not in dispute and it is also the case of respondents 4 and 5 that on 30th December, 1988 fresh nominations were made to the Krishnanagar Mandal Panchayat in question by the Zilla Parishad and the election to the offices of Pradhan and Upa-Pradhan was held on 3-1-1989 by the Prescribed Officer for Election to the post of Pradhan and Upa-Pradhan of Krishnanagar Mandal Panchayat. In that election respondents 4 and 5 were elected as Pradhan and Upa-Pradhan of the said Mandal Panchayat.

7. The petitioners challenged this proceeding on the ground that the said election proceeding was opposed to the direction contained in Ashok's case which was followed in Writ Petition No. 17164 of 1987 and a direction was issued to conduct the election of Pradhan and Upa-Pradhan as is permissible under law. It is the further case of the petitioners that the only course permissible under law, as per the direction contained in Ashok's case was to exclude the votes cast by two persons whose nominations were declared to be invalid and count the remaining

votes and declare the election results and it was not at all permissible to hold fresh elections.

8. On the contrary, it is the case of respondents 4 and 5 that the judgment in Ashok's case was challenged before the Supreme Court in Petitions For Special Leave to Appeal (Civil) Nos. 268-269,257/ 89, 7276-77/88, 1413 and [417/1989] and an interim order was passed on 30th January, 1989, and the Special Leave Petitions were finally disposed of on 21st August, 1989; that in the light of the interim order passed on 3-1-1989 and the final order passed on 21-8-1989 the direction issued by this Court, as contained in para 34 of the judgment must be deemed to have been impliedly overruled and those direction must be deemed to have been modified. Therefore, the fresh nominations made and the fresh elections held were in accordance with the judgment of the Supreme Court and were also in accordance with the provisions of the Act governing the nominations and elections.

9. The learned single Judge has held that the election conducted on 3-1-1989 by the 2nd respondent was not in accordance with the direction contained in the judgment of this Court in Ashok's case inasmuch as the directions contained in the judgment of Ashok's case must be read as forming a part of the directions issued in Writ Petition No. 17164 of 1989. Therefore, the election held on 3-1-1989 was not valid. The learned single Judge also held that the judgment in W. A. No. 1902 of 1989 Angamuthu Modaliyar, Mysore v. Eregowda, Mysore did not govern the case. Accordingly, the learned single Judge allowed the writ petition and quashed the election proceedings and further directed the 2nd respondent to re-count the votes cast at the election held on 19-4-1987 after excluding the two invalid votes and proceed to announce the results in terms of R. 4 of Karnataka Mandal Panchayat (Election of Pradhan and Upa-Pradhan) Rules, 1987. In this judgment the Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 and the Karnataka Mandal Panchayats (Election of Pradhan and Upa-Pradhan) Rules, 1987 are herein after referred to as the Act and the Rules, respectively.

10. It is contended by respondents 4 and 5 in the writ petition, who are appellants before us, that the petitions for Special Leave to Appeal, which are quite contrary to one of the points determined by this Court in Ashok's case must be held to have modified the decision of this Court and therefore, it is not correct to hold that the Supreme Court has affirmed the decision of this Court on all the points determined in Ashok's case.

11. In Ashok's case contention No. V was one of the points raised for determination. It was as follows :

'In case the results of the election were materially affected by the votes of the illegally nominated members, as a consequence, fresh elections should have been ordered and the directions to alter the results of the elections already held by deleting the votes of these nominated members, was not proper.'

The finding recorded by this Court on the aforesaid contentions No. V has already been re-produced in para 4 supra.

12. The Supreme Court on 30th January, 1989 passed the following interim order :

'.....And this Court Doth further pass the following order :

This order will not affect in any manner the functioning of those who have already by this time assumed office as Pradhan and Upa-Pradhan of the Mandal Panchayats pursuant to the directions given by the High Court. They may continue to function subject to the further orders of this Court in the manner of their functioning.'

It is further clarified that if the Panchayats elected to Mandal Panchayats pursuant to the directions given by the High Court have not already assumed offices, the declaration of the results of their elections is stayed until further orders.'

There-after, on 21st August, 1989, the Supreme Court dismissed the petition for special leave to appeal by the following orders :

'The Special Leave Petitions are dismissed. But we direct the Zilla Parishads to make fresh nomination in accordance with the provisions of S. 5(3) of the

Karnataka Zilla Parishad, Taluk Panchayat Samitis, Mandal Panchayat Act, 1983 within a period of three weeks from today. The Zilla Parishad shall hold election for the offices of Pradhan and Panchayats of the Mandal Panchayats within period of three weeks from that date. If the nominations are not made within a period of the three weeks then the elections will be held. And the order of this Court dated 30th January, 1989 passed in Civil Misc. Petition Nos. 605-606 of 1989 be and is hereby vacated.'

13. It is contended by Sri. Nayak, learned counsel for the writ-petitioners, who are respondents 4 and 5 in the writ appeal, that the Supreme Court has dismissed the Special Leave Petitions therefore, it follows that the decision rendered in Ashok's Last on every point that arose in the case must be held to have been approved including the direction contained in para 34 of the judgment, and as such further direction issued by the Supreme Court did not have the effect of governing the judgment and therefore, it was not at all open to the 2nd respondent to hold fresh elections.

14. Having regard to the aforesaid contentions the point that arises for consideration as as to whether in the light of the judgment of the Supreme Court dated 21-8-1989 in the Petitions for Special Leave to Appeal (Civil) No. 268-269 of 1989 connected with Civil Miscellaneous Petition Nos.605 and 606 of 1989, the judgment in Ashok's case can be held to have been modified?

15. No doubt the Supreme Court dismissed the civil petitions. But the directions issued by the Supreme Court are general in nature and have the effect of modifying the decision of this Court on contention No. 5 in Ashok's case. As the said directions are quite opposed to the decision on contention No. 5 in Ashok's case the Supreme Court must be held to have modified the finding recorded by this Court on contention No. 5, as otherwise maintaining those findings the directions of the nature issued by the Supreme Court could not have been issued. No doubt the Civil Petitions were dismissed; but the dismissal followed the aforesaid directions. Therefore it would only mean that the petitions were dismissed subject to the directions issued therein. Those directions have had the effect of modifying the decision of this Court on contention No. 5 recorded in

Ashok's case. Therefore, the contention of Mr. Nayak that ratio of the decision in Ashok's case as to the manner of declaring the results of the elections pursuant to the decision has not been modified, because, the civil petitions are dismissed, cannot be accepted. The words 'dismissed' or 'allowed' used in the order or judgment are not determinative of what is decided in the case. It is the congestive of what is decided in the case. It is the contents of the order or judgment and the findings recorded therein are material in determining as to what is decided therein and as to what is the true effect and purport of the decision. Therefore, the entire order of the Supreme Court has to be read together. The dismissal of the Civil Petitions must be subject to the directions contained therein. Merely because in categorical terms the Supreme Court has not stated that the finding on contention No. 5 in Ashok's case is set aside or modified, it is not possible to hold that the finding recorded by this Court on that point contention No. 5 is affirmed by the Supreme Court, as long as the directions issued by the Supreme Court are not in conformity with the finding recorded on contention No. 5 in Ashok's case. Therefore, there is no escape from the conclusion that the Supreme Court must be held to have modified the finding on contention No. 5 and substituted it in terms of the direction issued | by it. Therefore, the contention of Sri Nayak that the ratio of the decision in Ashok's case has been disturbed cannot at all be accepted.

16. It is also contended by Sri Nayak, learned counsel for respondents 4 and 5 that the directions issued by the Supreme Court, as contained in the order dated 21st August, 1989 were on the consent of the parties to the proceedings before the Supreme Court and therefore, they cannot be held to form a precedent or a ratio of the pronouncement of the Supreme Court so as to be binding on the other courts. In support of this contention, learned counsel has placed reliance on the decisions of the Supreme Court in *Municipal Corporation of Delhi v. Gurnam Kaur*, : AIR 1989 SC38 and *Addl. District Magistrate, Jabalpur v. Shivakant Shukla*, : 1976 CriLJ945 .

17. It is not possible to apply the ratio of the decision in *Municipal Corpn. of Delhi v. Gurnam Kaur*, because a reading of the judgment of the Supreme Court in the aforesaid S.L.A.Ps. does not reveal that the directions were issued by consent of the parties. We are of the view that we cannot go, and it is not open to us to go

behind the judgment of the Supreme Court and find out as to what was the reason for issuing such directions. The judgment as rendered as long as it is not ambiguous, will have to be considered with reference to the points decided. Therefore, we are of the view that the aforesaid decisions cannot be applied to the facts of the present case.

18. The learned single Judge is also not correct in holding that the decision in Writ Appeal 1902 of 1989 has also no bearing in the case. It is relevant to notice that Writ Appeal 1902 of 1989 was preferred against the order dated 11-9-1989 passed in Writ Petition 7024 of 1987. The said order read as follows :

'When this case came up for orders today, by consent of the learned counsel the case was heard. Since there is no objection from any quarter for allowing the writ petition, the writ petition is allowed and it is hereby ordered that fresh nomination shall be made under S. 5(3) of the Karnataka Zilla Parishad, Taluk Panchayat Samitis, Mandal Panchayat Act, 1983, for the offices of the Pradhan and Panchayats of Bannikuppe Mandal Panchayat, Hansur Taluk, Mysore District, within a period of three weeks from the date of this order. If the nominations are not made within a period of three weeks as directed herein then the elections shall be held for the offices of the Pradhan and Panchayats by the Prescribed Authority under the Act expeditiously.

2. Accordingly, this writ petition is disposed of.'

In the Writ Appeal the Division Bench after reproducing the aforesaid order of the learned single Judge, has held as follows :

'From the said order it is clear that the writ petition was allowed as prayed for, which clearly means that the election of respondents 8 and 9 for the offices of Pradhan and Panchayats was set aside and a direction was issued to the Zilla Parishad to make fresh nominations and to the Prescribed Authority to hold elections after lawful nominations were made. A typographical error has crept into the order of the learned single Judge in (hat instead of directing nomination to be made under S. 5(3) of the Act to the Mandal Panchayat, nomination is directed to be made for the offices of the Pradhan and Panchayats; this direction should be

understood as a direction to make fresh nominations to the Mandal Panchayat. The rest of the order is clear viz., that if nominations are not made within three weeks, the Prescribed Authority was to proceed to hold election to the offices of Pradhan and Panchayats without waiting for fresh nominations.

3. The learned counsel for respondents Ho 3 submitted that actually nominations had already been made afresh by the Zilla Parishad taking note of the judgment of this Court in ILR 1988 Ker 1380 on 14-10-1989. Therefore, no direction to make nomination is necessary. If as stated by the learned counsel for very same persons (appellants) have been nominated by the Zilla Parishad, it is clear that they will have the right to participate in the election. In the circumstances, we make the following order :

(i) Appeal is partly allowed;

(ii) The Prescribed Authority is directed to hold fresh ejections to the offices of the Pradhan and Panchayats of Bannikuppe Mandal Panchayat forthwith.'

19. From the order of the learned single Judge in the aforesaid W.P. NO. 7024.87, it is clear that the directions in terms of the judgment of the Supreme Court for holding fresh elections was issued by the learned single Judge. Those directions after referring to Ashok's case were confirmed by the Division Bench in Writ Appeal 1902 of 1989. Though the Division Bench of this Court has not referred to the directions issued by the Supreme Court in the aforesaid S.L.A.Ps. but it has understood the judgment in Ashok's case that it is permissible to hold a fresh elections after the fresh nominations.

20. In the instant case, as already pointed out, fresh nominations have been made and the fresh election to the offices of the Pradhan and Panchayats are held on 3-1-1989, in which the appellants herein, who are respondents 4 and 5 in the writ petition have been elected as Pradhan and Panchayats, respectively. Therefore, we are of the view that the learned single Judge is not justified in quashing the entire proceedings of the election held by the 2nd respondent in which respondents 4 and 5 in the writ petition were elected. We accordingly answer the point raised for determination in the affirmative. Consequently, the election of

respondents 4 and 5 as Pradhan and Panchayats is not liable to be interfered with in a petition under Art. 226 of the Constitution on the grounds stated in the order under appeal.

21. For the reasons stated above, the writ appeal is allowed. The order dated 7-12-1989 passed in W. P. No. 1605/1989 is set aside and the writ petition is dismissed.

22. Sri Chandrasekharaiah, learned High Court Government Advocate, is permitted to file his memo of appearance on behalf of respondent No. 3 within six weeks.

23. Appeal allowed.

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